IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

SA.No. 573 of 1993(B)

AGAINST JUDGMENT AND DECREE DATED 10.7.1992
IN AS.162/1988 of PRINCIPAL SUB COURT,PARAVUR
OS.327/1987 of MUNSIFF COURT, PARAVUR

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APPELLANT(APPELLANT-PLAINTIFF):

JOY, S/O. PHILIP,
KALLARACKAL,
EZHIKKARA VILLAGE,
N. PARAVUR TALUK.

BY ADV. SRI.S.VIDYASAGAR
ADV. K.N. NARAYANA PILLAI

RESPONDENT (RESPONDENT-DEFENDANT)

CHACKO JOSEPH, NEDUMTHALLIL ALIAS MALIAKKAL,
PARAVUTHARA MURI, PARAVUR VILLAGE, N.PARAVUR.

BY ADV. SRI T.A.GOPALAKRISHNA MENON
SRI.K.T.SYAM KUMAR

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

S.A.NO. 573 OF 1993

DATED THIS THE 31st DAY OF JANUARY, 2007

JUDGMENT

Second appeal was filed challenging the concurrent decree and judgment passed by Munsiff Court, North Paravur dismissing O.S.568/87 a suit for injunction, which was confirmed by Additional Sub Judge, North Paravur in A.S. 162/88. The decree sought for was from forcibly evicting appellant from the plaint schedule property, other than by due process of law. It was contended that when O.S.568/87 was filed by respondent seeking a decree for recovery possession, Courts below should not have decided the question whether the relationship between appellant and respondent is that of landlord and tenant or a licencer and licencee. It was reported that O.S.508/1987 was subsequently decreed exparte on 9.6.1993 and appellant filed an application under Order IX Rule 13 of Code of Civil Procedure to set aside the exparte decree, which was also dismissed as not pressed on 14.3.1995. In view of the decree for recovery possession obtained by respondent, there is no necessity to consider the claim of appellant that he shall not be forcibly evicted other than

by due process of law as a decree for recovery of possession was already granted to respondent in 1993 itself. No substantial question of law arises in the appeal.

Second Appeal is dismissed.

M.SASIDHARAN NAMBIAR,JUDGE

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